IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 27241 of 2007(R)

PETITIONER:

KUNIYIL THEKKETHODI MUHAMMED KUTTY
S/O.KUNHALAVI HAJI,VELIPRAM AMSOM
KOZHIKODE TALAUK,KOZHIKODE DISTRICT.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

KUNIYIL THEKKETHODI ABOOBACKER,
S/O. KUNHAMMUTTY,
VELLIPRAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.27241 of 2007

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Dated this the 13th day of September, 2007.

JUDGMENT

This Writ Petition is filed challenging the order, Ext.P3, whereby the Additional Munsiff - II, Kozhikode dismissed the prayer of the petitioner to send the document to the handwriting expert for the purpose of ascertaining the age of the writing and the signature in the document. It is the case of the writ petitioner that he had entrusted a blank signed stamp paper to the respondent herein, who is a relative for the purpose of furnishing a security in connection with some Bank transaction and that the respondent has misused that paper and converted into an agreement to sell and had filed a suit of this nature and therefore, it is inevitable to assess the age of the signature as well as the age of the writing in the document which would go a long way to show that the writ petitioner had only signed in a blank stamp paper and the writing is incorporated by the

respondent herein with the malafide motive of getting the property.

2. It is true that on an earlier occasion, when the plaintiff filed an application for sending the signature for comparison, the defendant opposed it and it was dismissed. Needless to say that the signature in the document is admitted by the defendant. But his contention is that it was only a blank signed stamp paper. It is a settled principle of law that when the execution of the document is denied, mere proof of a signature may not be sufficient, especially, when the defendant specifically contends that he had only given his signature in a blank stamp paper. Suppose, the document is written on different timing it will go a long way in considering the correctness or genuineness of the contentions put forward by the defendant.

3. It is true that there is some delay in filing the application. But I feel that in the interest of justice, it has to be allowed and therefore, the order under challenge is set aside and the interim application is allowed. The writ petitioner is directed to find out an expert, who can give a report expeditiously rather than sending to the Government Department, which will take

considerable time as voluminous number of matters are pending there. After hearing both sides on that point, the court may send the document for the expert opinion as prayed for. The court below is directed to defer the matter which is posted tomorrow in the light of this finding.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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